

**United States Department of Labor
Employees' Compensation Appeals Board**

N.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Worcester, MA, Employer**

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**Docket No. 17-1110
Issued: September 6, 2017**

Appearances:

William Bothwell, for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

On April 27, 2017 appellant, through a representative, filed a timely appeal from an April 6, 2017 decision of the Office of Workers' Compensation Programs (OWCP), which found that his reconsideration request was untimely filed and failed to demonstrate clear evidence of error. The appeal was docketed as Docket No. 17-1110.

OWCP initially denied appellant's occupational disease claim on January 21, 2015. On December 16, 2015 appellant requested reconsideration. By decision dated January 26, 2016, OWCP denied appellant's claim as it found that appellant had failed to establish causal relationship. Appellant requested reconsideration in a letter received on January 26, 2017. In its April 6, 2017 decision, OWCP found that the reconsideration request was untimely filed and failed to demonstrate clear evidence of error.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

The Board has duly considered the matter and finds that appellant's request for reconsideration was timely. Section 10.607(a) of the implementing regulations provides that an application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.² In computing the time for requesting reconsideration, the one-year period begins on the next day after the date of the original contested decision.³ The last day of the period shall be included unless it is a Saturday, a Sunday, or a legal holiday.⁴ Thus, the reconsideration request was timely filed, as it was received by OWCP on January 26, 2017, within one year of the last merit decision. Because appellant filed a timely reconsideration request, the case will be remanded to OWCP for application of the standard for reviewing timely requests for reconsideration.⁵ The clear evidence of error standard utilized by OWCP in its April 6, 2017 decision is appropriate only for untimely reconsideration requests. After such further development as OWCP deems necessary, it should issue an appropriate decision to protect appellant's appeal rights.

IT IS HEREBY ORDERED THAT the April 6, 2017 decision is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: September 6, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

² 20 C.F.R. § 10.607(a).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016).

⁴ *Id.* See also *Debra McDavid*, 57 ECAB 149 (2005); *John B. Montoya*, 43 ECAB 1148 (1992).

⁵ See 20 C.F.R. § 10.606(b).